tent, should not be permitted afterwards to sue in tort for the balance due him, has been given much weight by the court in several cases. See, under Act of 1841, *Chapman* v. *Forsyth,* 2 How. 202; under the Act of 1898 before the amendment of 1903, *Crawford* v. *Burke,* 195 U. S. 176; since that amendment, *Standard Varnish Works* v. *Haydock,* 143 Fed. 318; but the holding of the principal case is now well established

BILLS AND NOTES—WANT OF FUNDS AS EXCUSE FOR FAILING TO GIVE NOTICE OF PROTEST.—Where the maker had no funds or right to draw on the drawee bank, either at the time the check was drawn or when it was presented for payment and protested, such want of funds was prima facie an excuse for want of notice of protest to him. *Gibbs* v. *Hopper,* (Ark. 1913) 160 S. W. 879.

The decision of this case is correct as far as it goes, but it stops short of what is the law upon this subject. The drawer of a check or of a bill is a party secondarily liable, so that presentment and notice of dishonor is essential to fix his conditional liability. But there is a distinction between the liability of a drawer of a bill without funds in the hands of the drawee and the drawer of a check under the same circumstances. The drawing of a bill without funds in the hands of the drawee makes the drawer only presumptively liable as a primary party, his drawing being only prima facie fraudulent, and this presumption is capable of being rebutted, so that he is entitled to notice. But where the drawer of a check has no funds in hands of drawee, the drawing is conclusively presumed to be fraudulent, he is liable as a primary party and hence not entitled to notice. *Dolph* v. *Rice,* 18 Wis. 418; *Harker* v. *Anderson,* 21 Wend. 372; *First National Bank* v. *Linn, et al,* 30 Ore. 296; *Industrial Bank* v. *Bowes,* 155 Ill. 70; *Kinyon* v. *Stanton,* 44 Wis. 471; *Morrison* v. *McCartney,* 30 Mo. 183; *Gregg* v. *George,* 16 Kan. 546; *Thornberg* v. *Emmons,* 23 W. Va. 325; *Purcell* v. *Allemono,* 22 Gratt. 743. Hence the decision of the instant case that the want of funds was only prima facie an excuse for want of notice of protest to the drawer, does not observe the above distinction, and therefore is not broad enough in its statement of the legal principles governing the facts therein adjudicated.

BOUNDARIES—DESCRIPTION—PUBLIC HIGHWAYS.—In a controversy in a a street improvement case as to appellee's right to an award, it appeared that the deed by which she acquired title described the premises as follows: "Beginning at the northwesterly corner of Walnut St. and Second Ave.; thence running westerly along said street fifty ft.; thence parallel with said avenue one hundred ft.; thence easterly parallel with said street fifty ft.; to said ave.; thence southerly along said avenue one hundred ft. to corner aforesaid and place of beginning." The granting of the award depended upon whether the deed carried title to the center of Walnut St. or only to the exterior line. *Held,* the words were explicit enough to rebut the presumption of a grant to the middle of the street, and the deed only carried title to the exterior line. *In re Parkway in the City of New York* (N. Y. 1913), 103 N. E. 508.

The precise question raised in this case is one upon which there is much